



**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.**

The foregoing petition contains a statement of the case, the issues, the rulings of the lower courts, and the reasons for granting a Writ of Certiorari.

Opinion Below.

The decision on which review is sought was rendered on October 30, 1944, by the Circuit Court of Appeals. A rehearing was denied and judgment rendered on the 20th day of December, 1944. The opinion of the Circuit Court of Appeals appears in 145 Fed. (2), page 523. (Advance Sheets, Federal Reporter, dated January 15, 1945).

Jurisdiction of the Supreme Court.

Jurisdiction of the Court is invoked pursuant to Sections 237 (b) and 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Rule 38 (B) of the Supreme Court of the United States.

ARGUMENT.

The Circuit Court of Appeals has fairly stated the facts in this case in its opinion. There were no disputed facts in the case. Questions of law alone arise on the record.

I.

The Court Below Overlooked or Ignored That Part of the Opinion in *Van Koten v. Van Koten*, Which Declared Contracts of This Character as Being Against and Opposed to the Public Policy of the State of Illinois, and Therefore Void.

As previously stated in the petition, the Circuit Court of Appeals based its opinion and judgment in the case at bar by citing from the case of *Van Koten v. Van Koten*, 323 Ill. 323, in respect to what the court said in distinguishing a class of cases wherein the husband and wife merely agree to the settlement of their mutual property rights; that the Court of Appeals, obviously, ignored the portion of the opinion in which the Supreme Court of Illinois decided the case by reversing the lower court, on the ground that the contract there involved also embraced a provision wherein the wife released the husband from his duty of support, and on page 326, immediately following the portion of the opinion quoted by the Circuit Court of Appeals, the Illinois Supreme Court said the following:

“Marriage is a civil contract to which there are three parties,—the husband, the wife and the State,—and it is regarded as a status based upon public necessity and controlled by law for the benefit of society at large.
* * * One of the contractual obligations of the marriage contract is the duty of the husband to support

the wife, and this contractual obligation cannot be abrogated without the consent of the third party,—the State. Husband and wife may contract with each other as to their mutual property rights, but the husband cannot by contract, either before or after marriage, relieve himself of the obligation imposed upon him by law to support his wife, and a contract between husband and wife one of the material provisions of which is that the husband shall be relieved of the obligation imposed upon him by law to support his wife is illegal and void as being contrary to public policy.”

II.

Contracts Between Husband and Wife Wherein Settlements Are Made With Reference to Their Respective Property Rights, Also Embodying Provisions Releasing the Husband From His Obligation to Support the Wife, Are Held to Be Illegal.

In *Vock v. Vock*, 365 Ill., at page 434, the Illinois Supreme Court said the following:

“The \$5000 paid plaintiff by defendant was not only for a release of her rights in his property, but for the release of his obligation to provide for her support. The invalid provision is inseparable from any other provision of the contract and was so material a consideration that it renders the entire contract invalid, under the long established rule that if any part of the entire consideration for a contract is illegal, the whole contract is void. That which is bad destroys that which is good and both perish together.”

III.

**The Court Cannot Afford any Relief Where Contract Is
Illegal or Against Public Policy.**

We beg to call the Court's attention to the rule announced in *Vock v. Vock*, 365 Ill., at top of page 435:

"It is a rule of equity that where a contract is illegal or against public policy, a court of equity will not, at the suit of one of the parties who participates in the illegal or immoral intent, either compel the execution of the agreement or set it aside after it has been executed, because to give relief in such a case would injure and counteract public morals. The application of this rule is not in the interest of any party to the illegal or immoral transaction but is in the interest of the public."

IV.

An Illegal Contract Cannot Be Ratified.

The Illinois Supreme Court, in *Lyons v. Schanbacher*, 316 Ill. 569, said on page 574:

"A contract illegal as against public policy cannot be ratified. * * * This court has held an illegal contract cannot be ratified, nor is there any estoppel against asserting its invalidity."

V.

**The Law Will Not Lend Its Support to a Claim Founded
Upon Its Violation, and the Defense of Illegality Is
Allowed for the Sake of the Law and Not for Any Party.**

Coppell v. Hall, 7 Wallace, 74 U. S. 558-559.

Lyons v. Schanbacher, 316 Ill. 569.

VI.

Allowance for Separate Maintenance Can Be Made Only in Case Where Separation Is Without Fault of the Wife.

In *Vock v. Vock*, the Supreme Court of Illinois held, on page 434, as follows:

“However, an allowance of separate maintenance, under the statute, can be made to her only in a case where the separation is without her fault.”

To the same effect, *French v. French*, 302 Ill. 161.

The Circuit Court of Appeals in its opinion terms the decree of divorce between the parties a default divorce. The decree of divorce finds that the wife was personally served with summons and it was her duty, if she had any defense, to make it by pleading and proof. There was no appeal from the decree and no attempt thereafter to vacate or amend the terms thereof.

The case of *Adler v. Adler*, 373 Ill. 361, cited by the Circuit Court of Appeals, has no application to the question involved in this proceeding. The case went up on the question of the correctness of the ruling of the lower court in reducing the amount of alimony awarded some years before. In that case, the court at the time of making the award of alimony, approved the contract between the parties and the contract was incorporated in the decree of divorce.

In Illinois, courts retain jurisdiction over alimony awards and can either reduce or increase the award when justified, upon a showing of the change of the economic condition of either of the parties that was unforeseen at the time the award was made.

The Circuit Court of Appeals, by overruling the judgment of the District Court and ordering the allowance of the claim of the respondent, thereby permitted her to share

in the distribution of said estate with Creditors of the bankrupt, and by its ruling, said court has construed the contract in direct opposition to the declared public policy of the State of Illinois, shown by an unbroken line of decisions by its courts.

The record shows that this contract was made, executed and delivered in Illinois by citizens of the State of Illinois, and must be construed in accordance with the laws of the State of Illinois.

Tripp v. Payne, 339 Ill. 178.

Northwestern Mutual Life Ins. Co. v. McCue, 223 U. S. 234.

WHEREFORE, it is earnestly urged that certiorari be granted by this Court, requiring the Circuit Court of Appeals for the Seventh Circuit to certify the record in this cause to this court for review and determination.

Respectfully submitted,

LOUIS COHEN,

DAVID JETZINGER,

Counsel for Petitioner.

